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May 3, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal  
Date of Filing: September 24, 2004  
Case No.: TIA-0221

XXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for assistance in filing for state workers' compensation benefits based on the employment of her late husband (the Worker). An independent physician panel (the Physician Panel or the Panel) found that the Applicant did not have an illness related to a toxic exposure at DOE. The OWA accepted the Panel's determination, and the Applicant filed an appeal with the DOE's Office of Hearings and Appeals (OHA). As explained below, we have concluded that the appeal should be denied.

*I. Background*

**A. The Energy Employees Occupational Illness Compensation Program Act**

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. As originally enacted, the Act provided for two programs. Subpart B provided for a Department of Labor (DOL) program providing federal compensation for certain illnesses. See 20 C.F.R. Part 30. Subpart D provided for a DOE assistance program for DOE contractor employees filing for state workers' compensation benefits. Under the DOE program, an independent physician panel assessed whether a claimed illness or death arose out of and in the course of the worker's employment, and exposure to a toxic substance, at a DOE

facility. 42 U.S.C. § 7385o(d)(3); 10 C.F.R. Part 852 (the Physician Panel Rule). The OWA was responsible for this program.

The Physician Panel Rule provided for an appeal process. An applicant could appeal a decision by the OWA not to submit an application to a Physician Panel, a negative determination by a Physician Panel that was accepted by the OWA, and a final decision by the OWA not to accept a Physician Panel determination in favor of an applicant. The instant appeal was filed pursuant to that Section. The Applicant sought review of a negative determination by a Physician Panel that was accepted by the OWA. 10 C.F.R. § 852.18(a)(2).

While the Applicant's appeal was pending, Congress repealed Subpart D. Ronald W. Reagan Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375 (October 28, 2004). Congress added a new subpart to the Act, Subpart E, which establishes a DOL workers' compensation program for DOE contractor employees. Under Subpart E, all Subpart D claims will be considered as Subpart E claims. *Id.* §3681(g). In addition, under Subpart E, an applicant is deemed to have an illness related to a workplace toxic exposure at DOE if the applicant received a positive determination under Subpart B. *Id.* §3675(a).

During the transition period, in which DOL sets up the Subpart E program, OHA continues to process appeals of negative OWA determinations.

## B. Procedural Background

The Worker was employed as a lab analyst at the Paducah Gaseous Diffusion Plant (the plant). The Worker is deceased. The application stated that he worked at the plant for approximately two years -- from 1960 to 1962. The Applicant requested physician panel review of two illnesses -- kidney failure and radiation nephritis. The OWA forwarded the application to the Physician Panel.

The Physician Panel rendered a negative determination on each of the Worker's claimed conditions. The Panel cited the Worker's cumulative radiation exposure while at the plant as being well below acceptable background levels. The Panel stated that the record contained insufficient evidence of any toxic

exposures that could have caused kidney failure. The Panel stated that the record contained no diagnostic evidence of radiation nephritis. The OWA accepted the Physician Panel's determination. The Applicant filed the instant appeal.

In her appeal, the Applicant states that the Worker was exposed to a release of Uranium Hexafluoride (UF<sub>6</sub>) in 1962. She states that this "release" forced the Worker to be relocated out of Building C-410. The Applicant cites various external sources regarding the dangers of uranium in the body and the harm it may cause to kidneys. The Applicant closes by stating that the Worker developed severe kidney problems with no known etiology shortly after his termination at the plant.

## *II. Analysis*

Under the Physician Panel Rule, independent physicians rendered an opinion whether a claimed illness was related to a toxic exposure during employment at DOE. The Rule required that the Panel address each claimed illness, make a finding whether that illness was related to a toxic exposure at DOE, and state the basis for that finding. 10 C.F.R. § 852.12.

The Applicant's appeal is not supported by the record. The record contains no evidence of a UF<sub>6</sub> release in Building C-410. Additionally, the record contains no evidence of the etiology of the Applicant's conditions. Some of his physicians stated that the Worker suffered from a severe kidney condition of no known cause. Thus, the record does not contain information to support a conclusion that toxic exposures at DOE were a significant factor in the Worker's kidney conditions. Accordingly, the Appeal has not identified Panel error and should be denied.

In compliance with Subpart E, these claims will be transferred to the DOL for review. The DOL is in the process of developing procedures for evaluating and issuing decisions on these claims. OHA's review of these claims does not purport to dispose of or in any way prejudice the Department of Labor's review of the claims under Subpart E.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0221 be, and hereby is, denied.

- (2) This denial pertains only to the DOE claim and not to the DOL's review of this claim under Subpart E.
- (3) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: May 3, 2005